

# **CITY OF VICTORVILLE**

## **REQUEST FOR PROPOSALS (RFP)**

**PROJECT# CC16-047**



**RFP FOR AMERICANS WITH DISABILITIES ACT (ADA)  
COMPLIANCE CONSULTANT**

**SUBMITTAL DUE DATE:**

**NOVEMBER 30, 2015  
AT 2:00**

## CITY OF VICTORVILLE

### NOTICE INVITING PROPOSALS

#### CC16-047 RFP FOR AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE CONSULTANT

**I. GENERAL INFORMATION**

The City of Victorville is seeking a qualified ADA Compliance Consulting Firm to inspect, evaluate and prepare reports identifying potential barriers in the City-owned buildings, parks, parking lots and public rights-of-way

**II. PROPOSAL DUE DATE**

Proposals must be received by the Finance Division of the Administrative Services Department of the City of Victorville at 14343 Civic Drive, Victorville, CA 92392 by **2:00 p.m. on NOVEMBER 30, 2015**. For additional information please call Celeste Calderon at 760-955-5082 or email at [cmcalderon@victorvilleca.gov](mailto:cmcalderon@victorvilleca.gov).

**III. OBTAINING PROPOSAL FORMS**

The complete Request for Proposal may be obtained from the City of Victorville Web Page at [www.ci.victorville.ca.us](http://www.ci.victorville.ca.us) under Purchasing Bids. Project documents can also be downloaded on Ebidboard.com.

**IV. CRITERIA**

Service Provider shall be selected on the basis of demonstrated competence and professional qualifications to provide the requested services. Cost will not be used as a basis for selecting Service Provider. The City will verify that each proposal contains all forms and other information required by this RFP. If all required information is not provided, the proposal may be considered non-responsive and rejected without evaluation.

Date: November 2, 2015

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Marcie Wolters, Assistant City Clerk

## **CITY OF VICTORVILLE**

### **SCOPE OF SERVICES**

#### **CC16-047 ADA COMPLIANCE CONSULTANT**

##### **INTRODUCTION**

The City of Victorville has a population of approximately 120,000 people and is located in the Mojave Desert, 100 miles southeast of Los Angeles California. A Transition Plan was prepared in 1993 and needs to be updated. The City is seeking an experienced ADA Consultant to survey and evaluate City-owned facilities, appurtenances, walkways and parking lots; programming; Web pages; Recreation or Public Outreach programming; and Right-of-Way areas to determine Americans with Disabilities Act (ADA) compliance and formulate a revised Transition Plan for achieving compliance in those facilities. The City entered into a Voluntary Compliance Agreement (VCA) on September 24, 2015 and has 240 calendar days to gain compliance.

##### **SUB-CONSULTANTS**

The use of sub-consultants for this project is discouraged by the City. The City requires that team members be directly accountable to the bidding Consultant in order to provide a seamless project delivery and smooth interaction with City staff. If sub-consultants are proposed, please provide their names, qualifications, and insurance information. They will be subject to the same limits of liability and insurance requirements as the Consultant.

##### **SCOPE OF WORK**

The City of Victorville (City) is seeking a qualified ADA Compliance Consulting firm (Consultant) to inspect, evaluate and prepare reports identifying potential barriers in the City-owned buildings, parks, parking lots and public rights-of-way.

Any selected contractor shall employ a minimum of one person who is "CAsp" (Certified Access Specialist) certified by California's Division of the State Architect. This person must provide a certification number for verification by City Staff. The CAsp will oversee the preparation of all reports regarding compliance and identified deficiencies, including the work of any selected sub-contractor, to verify that the deficiencies and identified solutions meet State and Federal regulations.

The Consultant's staff will identify barriers or potential barriers in accordance with applicable Federal and State accessibility standards and regulations. In addition, it is understood that Consultant will assist the City in developing a schedule for barrier removal over time in a cost effective and realistic manner, using programmatic solutions where available.

In order to successfully complete the project activities in a timely manner, Consultant will work closely and collaboratively with the City of Victorville without imposing unnecessary interruptions or burdens to City staff. It is expected that the Consultant will work diligently towards establishing and maintaining clear and effective lines of communication with the City.

Consultant will present information and references to the City that establishes an extensive knowledge and experience with all Federal and State regulations; which includes, but is not limited to the ADA codes up to and including the current 2010 American's Disability Act Standards (ADAS), 28 Code of Federal Regulation (CFR) 35, Title 24 California Building Standards Code, Title II of the ADA, PROWAG, MUTCD, Section 504 and related Federal, State, and Local Standards and Regulations.

## **Utilization of Proprietary or Non-proprietary Data Management Software (DMS) Tools**

In addition to the above, management of the data generated in the Transition Plans and Self-Evaluations is a significant task. In order for the successful implementation and tracking of this data, the City requires that the consultant provide either proprietary or non-proprietary data management software (DMS) and a four year license for said software with unlimited users for that software.

The DMS should NOT be a simple database. The DMS will provide site specific information which will include at least one photograph of each noncompliant accessible item or element, a record number for reference, estimated costs and other features to assist with the implementation of the Transition Plan. The DMS should also be web-based. It should be a tool to manage and update the accessibility plan, project costs and document progress. Customized reports should be easily prepared, printed and saved in a variety of formats.

The DMS should also provide:

- Noncompliant findings and recommendations
- One or more photographs of each noncompliant finding
- Additional photographs can be viewed of the noncompliant item by one click
- A method to schedule and track the barrier removal
- A progress reporting feature for Documentation of progress and compliance
- Establishment of priorities, and refinement of subset priorities
- DMS must update and manage the Transition Plan
- The ability to document progress and barrier removal
- The ability to print custom reports
- The ability to update the plan “automatically” when codes change without re-inspecting sites
- The ability to project costs
- The ability to add or delete facilities
- The ability to collect and store actual measurements of ‘as-is’ conditions, including measurements and GIS data

The DMS should also interface with a tablet PC and/or “smart device” to add new facilities and update compliance assessments and transition plans. Consultant is to provide sample reports, user interface examples and screenshots as well as references from those who have utilized the proposed DMS. Proposal shall identify the name of the proposed software and its versions within their proposal.

Consultant shall also submit within their proposal a detailed schedule, with major milestones for all tasks and phases, including City review time for the project. A Gantt-type chart is acceptable.

## **SCOPE OF WORK OVERALL PHASES**

The project is to be executed in two phases. Detailed activities and deliverables are provided in the following scope of work description.

### **PHASE 1: Study and Evaluation - Self-Evaluation/Facility Survey/Barrier Assessment**

- a) Consultant will conduct an initial project kick-off meeting, with selected City of Victorville staff to establish roles and lines of communication, refine project goals, review the overall project schedule, schedule surveys of City of Victorville facilities and identify key City of Victorville personnel related to the project scope. Initial self-evaluation activities will be completed during this step.
- b) The initial orientation meeting should include an assessment of previous compliance activities and areas of current or potential litigation. The review of compliance activities and high priority areas will assist with the development of an overall project plan. The review and

documentation of prior initiatives will also build a more defensible plan if the City is challenged by litigation.

- c) Consultant will also assist with the recent HUD ADA Audit.
- d) Consultant will conduct field surveys of the buildings and facilities listed in the property schedule, as well as the City maintained public rights-of-ways. Public right-of-way work has been divided into three separate tasks, breaking the tasks into annual goals to include: **Task 1 / Year 1** - 165 miles of sidewalks, 4,300 curb ramps, and 87 signalized Intersections; **Task 2 / Year 2** - 165 miles of sidewalks, 4,300 curb ramps; and **Task 3 / Year 3** - 170 miles of sidewalks, 4,400 curb ramps. These are estimates and based upon current City Engineering Department knowledge. The City Engineer will work with Consultant to identify the highest priority sites for the work to be performed.
- e) Surveys will identify all physical barriers (interior and exterior) including the path of travel in and around the facility and from the public right-of-way at each site in accordance with Title 24 of the California Building Code and the ADA Standards (previously referred to as ADAAG).
- f) Consultant will provide geographical information for each identified physical barrier in the public right-of-way or on City facilities that can be incorporated into the City's Geographical Information System (GIS). This GIS data shall be in the State Plane California Zone V (US Foot) Coordinate System, shall use the North American Datum (NAD) 1983, and shall be compatible with Esri's ArcGIS 10.2 mapping software for all location based information. Through the DMS, Consultant will incorporate map-linked GIS locations into the plan. Consultant will use a comprehensive approach to inspecting public rights-of-way (PROW). In order to conduct an assessment of all the requirements in the PROW, Consultant will conduct manual measurements of the field conditions and enter the information into the DMS utilizing pc tablets in the field. City will not allow the use of automated equipment for running slopes on sidewalks, such as ultra-light profilers. They do not provide an actual measurement, but only provide a chart showing ranges. In some cases, if a change in level is greater than ½ inch, no actual quantifiable information is reported of how much greater, or of the severity. In order to get the actual measurements for the sidewalks and intersections, the use of a "profiler" does not provide the measurements needed for items such as automated pedestrian signals and street furniture.
- g) As required by the ADA, the 2010 ADA Standards will be compared with state codes (Title 24 of the California Building Code) and the standard that provides the greater level of accessibility utilized. As Consultant will collect as-is field conditions and records all information, data can be reprocessed if codes change without conducting a re-inspection, thus resulting in a significant savings when codes change and the plan needs to be updated.
- h) Provisions and standards for historic buildings will be applied as appropriate.
- i) Assessments and reports will include a high degree of detail with photographs, code references, and cost estimates. DMS and reports will include additional specifics, such as as-built dimensions, progress reports, additional prioritizations, preset reporting features and other custom reports. Reports will be delivered in the format requested, and reports will also be available using the DMS. The inclusion of photographs showing the as-is condition has proven to be valuable assistance to clients in the formulation of the decisions regarding barrier removal priorities. The DMS should provide an easy to use accessibility management platform that exceeds the ability to manage the plan by hard copies and binders. The assessment report of each facility will include cost estimates to correct deficiencies in accordance with the ADA, Title 24 of the California Building Code.
- j) Barriers are identified by building, floor, or location and given a unique identifier record number (UIN) to assist with navigation in the accessibility software and location of the finding and recommendation by area and site. Estimated applicable costs will be given by item and element in accordance with industry standards. Costs can be easily adjusted to adhere to any cost estimates the City may utilize.

- k) Physical access problems that require structural solutions will be documented in the Compliance Assessment/Transition Plan. The proposed method for removal will be provided. The transition plan will identify physical barriers that may limit accessibility of City programs, services or activities for individuals with disabilities. The schedule for removal of barriers and appropriate timelines will be developed in consultation with the City.
- l) The field survey information will be presented to the ADA Compliance Team as requested using the DMS web-based accessibility management system. Many different types of reports should be available to the City. Feedback will be incorporated as appropriate.
- m) The survey data will be compiled into a Transition Plan which will identify actual as-is conditions and prioritize current barriers, provide a schedule for barrier removal, as well as establish procedures for addressing future accessibility issues. The Transition Plan data is able to be exported to Excel or PDF formats. The Transition Plan data will include photographs, findings, recommendations, code references, estimated costs, priority settings (in addition to prioritized report) in accessibility software for accessibility management. Photographs and GIS coordinates are valuable for the development of the transition plan.
- n) Consultant will assist the City to solicit input from members of the community and persons with disabilities. Methods will be utilized to solicit public input may include notices, information on the website and surveys.
- o) The Transition Plan data will be provided using DMS which has management, monitoring, and web-based tracking tools that allow staff to manage current and future accessibility issues, update the deficiency status, and generate reports to show progress in meeting the Transition Plan requirements.

## **PHASE 2: Implementation - Transition Plan Development**

- a) Consultant will develop, in collaboration with the City a comprehensive ADA Self-Evaluation and Transition Plan for facilities, buildings, parks and public rights-of-way. The City will be expected to add the dates of the projected removal of the barriers as Consultant cannot unilaterally assign remodeling, renovation or construction dates. Consultant will collaborate with the City and assist with priority recommendations.
- b) The Transition Plan for public right of way shall meet the California State Department of Transportation requirements sufficient for the City to certify '**Exhibit 9-C Local Agency ADA Annual Certification Form**'. The Transition Plan and Exhibit 9-C certification for **Task 1** must be completed **before June 30, 2016**.
- c) Consultant will meet with the City to review the draft document and incorporate any comments, changes or feedback.
- d) Consultant will assist the City to conduct public outreach activities that may include website announcements, postings, surveys, announcements, individual meetings and other activities as requested.
- e) Consultant will prepare and produce a second draft if necessary with a detailed description of the barrier and the proposed method for barrier removal.
- f) Consultant will train the City in the use of the DMS web-based accessibility management system to prepare reports as well as update and manage the ADA Plan.
- g) Consultant will provide an executive summary of the project.
- h) Consultant will present the draft ADA Transition Plan at a regularly scheduled council meeting for discussion and for informational purposes as an "Information Only" item. It is not recommended that the plan be 'adopted' by the City, as the plan is meant to be "projected and estimated dates" and not final dates of barrier removal. Those can change as priorities and achievable goals are reached.
- i) Consultant will provide the City with a DMS, a web-based monitoring, tracking, and management system at project completion. The DMS allows users to review and update progress in barrier removal, and to generate many different styles of reports to document progress. The DMS will contain one or more integrated photographs that are attached to the finding, eliminating the need to reference another area or report supplement. The DMS

proposed will be an actual accessibility management software, not just electronic database of items contained in the Facility Survey Report. An electronic database or Excel format does not provide the City with a tool containing integrated photographs needed to implement the plan, set priorities, make notes and print custom reports.

- Consultant will license DMS to the City for a period of four years at no cost to manage all of the field data collected, print custom reports, document progress, estimate costs and perform other management functions;
  - Data collected will be the property of the City should the City decide for any reason not to continue to use the DMS accessibility intake and management software system;
  - The DMS will include and provide correlation with field data collected, reports, transition plans, drawings, code references, estimated costs and photographs for each noncompliant accessibility item or element;
  - Reference maps for GIS information will be provided in addition to a linked mapping system for each item;
  - The DMS will provide a description, location and record number for each barrier that allows the user to access the information and location
- j) Consultant will provide City staff with training regarding ADA Compliance from both a programmatic and administrative point of view and also for facility management and maintenance.

#### ***EVALUATION CRITERIA:***

City selection committee, with a minimum of three members, will be appointed at the beginning of the consultant selection process. The committee will review each written proposal submitted by the Firm to determine if they meet the requirements of this RFP. Failure to meet the essential requirements for this RFP may be cause for rejection of the proposal.

The following criteria will be used to rank the proposals:

- A. Expertise and Experience: the Firm's past experience and performance on comparable government Projects. This includes the quality of the Firm's professional personnel to be assigned to the Project and quality of the Firm's management support personnel to be available for technical consultation.
- B. Project Approach:
- i. Adequacy of proposed staffing plan for various segments of the Project.
  - ii. Adequacy of the work plan, including explanation of the study and report preparation methodology to be followed
  - iii. Adequacy of analytical study and transition plan deliverables.
- C. Cost Proposal: The reasonableness of the total all-inclusive maximum price including all direct and indirect costs including all out-of-pocket expenses.
- D. Past Performance: City staff will check Firm's provided references.

<b>MAXIMUM POINTS</b>	<b>CRITERIA</b>
30	Expertise and Experience
20	Project approach
20	Cost Proposals
30	Past Performance
<b>100</b>	<b>TOTAL</b>

The selection committee will rank the responding Firm's written proposals and will develop a short list of qualified Firms. The three top ranking Firms will be invited for a one-hour interview/presentation. The team representing in the interview/presentation shall consist of those individuals who will be directly involved in the project.

The final ranking of Firms will be based on 50% the interview/presentation and 50% written proposal.

At the conclusion of the ranking process, the sealed fee proposal for the top three ranked Firms will be opened. These fee proposals along with independent cost estimate prepared by the City will establish the basis for prevailing compensation for services incorporated in this RFP. Subsequently, the City will enter into negotiation with the top-ranked Firm. The goal of negotiation is to agree on a final contract that will deliver to the City the services and/or products required at a reasonable and fair compensation. If a fair and reasonable compensation cannot be negotiated with the top-ranked Firm, a new negotiation will be started with the next highest-ranked Firm. If this new negotiation fails, the process will be repeated until a contract is negotiated successfully.

The prospective Firm is advised that, should this Proposal result in award of a contract, the contract will not be in force until it is approved and fully executed by the City Council.

The selected Firm must comply with Government Code Section 8355 in matters relating to providing a drug-free work place. State Labor Code provisions and/or Federal regulations pertaining to wage rates shall be observed. All work shall be done in accordance with State standards, policies, procedures, regulations and laws.



## CITY OF VICTORVILLE

### SECTION 3-TERMS AND CONDITIONS

#### CC16-047 RFP FOR ADA COMPLIANCE CONSULTANT

NOTE: IT IS THE PROPOSER'S RESPONSIBILITY TO EXAMINE THE "REQUEST FOR PROPOSAL" SOLICITATION IN ITS ENTIRETY PRIOR TO SUBMITTING A PROPOSAL

#### TERMS AND CONDITIONS

A. Waiting Period

Proposals shall be firm offers, subject to acceptance or rejection for a period of up to ninety (90) days per "Request for Proposal" from the date of the proposal opening until proceedings are completed and an award is made. Firm shall assume full responsibility for the effect of the waiting period on all proposal fees and terms.

B. Insurance

Firm are required to provide with their proposal, certificates of insurance verifying coverage, as well as a letter from the Firm's insurance agent or corporate Risk Management Department acknowledging that the Service Provider is able to comply with all insurance requirements. It is highly recommended that Proposers confer with their respective insurance carriers or brokers to determine in advance of proposal submittal, the availability of insurance certificates and endorsements as prescribed herein.

During the term of this Contract, the Firm shall maintain at Service Provider's sole expense, the following insurance.

1. Minimum Scope of Insurance:

- a. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. Coverage shall be at least as broad as Insurance Services Office form number GL 00 02 (Ed. 1/73) covering Comprehensive General Liability and Insurance Services Office form number GL 04 04 03 81 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage, "occurrence" form CG 00 01 11 85. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location, endorsement CG 25 03 11 85 or CG 25 04 11 85, or the general aggregate limit shall be twice the required occurrence limit.
- b. Professional Liability and errors and omissions insurance policy providing a prudent amount of coverage for the willful or negligent acts, or omissions of any officers, employees or agents in conjunction with the services to be provided. Coverage limits shall be \$1,000,000 or more, per occurrence without reduction for claims paid during the policy period. The carrier should be duly insured and authorized to issue similar insurance policies for this nature in the State of California.
- c. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage. Coverage shall be at least as broad as Insurance Services Office form number CA 00 01 01 87,

covering Automobile Liability, code 1 "any auto" and endorsement CA 00 25 (Ed. 01 86).

- d. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and employers Liability limits of \$1,000,000 per accident.

2. Deductibles and Self-Insured Retention:

Any deductibles or self-insured retention must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the City, its officers, officials, employees and volunteers; or the Firm shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

3. Other Insurance Provisions: The policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, officials, employees, agents and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Service Provider; products and completed operations of the Firm; premises owned, occupied or used by the Firm; or automobiles owned, leased, hired or borrowed by the Firm.

The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents or volunteers.

2. For any claims related to this project, the Firm's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Firm's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its officers, officials, employees, agents or volunteers.
4. The Firm's insurance shall apply separately to each insured against whom a claim is made or suite is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days prior written notice, by certified mail return receipt requested, has been given to the City.
6. Professional Liability Insurance or Errors and Omissions insurance as appropriate to Service Provider's profession shall be required and written on a policy form specifically designed to provide coverage for and protect against the negligent acts, errors and omissions of the Firm in the performance of the services required by this Agreement.

A minimum limit of \$1,000,000 per claim and in the aggregate must be provided.

C. Proposal Preparation Costs

The City of Victorville is not, nor shall be deemed liable for any costs incurred by the Firm in the preparation, submittal, or presentation of their proposals.

D. Proposal Inclusions

The RFP documents shall be returned in their entirety, with **ALL** applicable portions fully completed by the Firm. All the Firms are encouraged to review and confirm that their proposal includes and specifically addresses all of the proposal requirements prior to submitting as outlined elsewhere in this document.

E. Withdrawal of Proposal Before Closing

Any Firm may request the withdrawal of their submitted proposal, by written request, at any time **prior** to the scheduled closing date and time. Upon receiving the written request to withdraw any proposal, the City of Victorville will consider the Firm's proposal null and void, and return the proposal to the Service Provider unopened. Withdrawal of the Firm's proposal will not prejudice the Firm's re-submittal for this or any future proposal(s).

F. Mistake in Proposal

Any Firm may withdraw their proposal after the proposal opening, subject to the time restrictions indicated below, **only** if the Firm can establish to the City of Victorville's satisfaction, that a mistake was made in preparing the proposal.

1. A Firm declaring a mistake must provide a written notice to the City of Victorville within five (5) calendar days following the scheduled closing date, specifying in detail how the mistake occurred, and how the mistake made the proposal materially different than it was intended.
2. Withdrawal of the proposal will **only** be permitted for mistakes made in the completion of the proposal. A Firm who claims a mistake shall be **prohibited** from submitting further proposals on the Project on which the mistake was claimed. (*Public Contract Code 5105*).

G. Proposal Labeling

The proposal shall be submitted in a **sealed envelope** with all original pages intact. Proposal envelopes must be **plainly marked** and submitted as follows:

**"SEALED PROPOSAL FOR: CC16-047 ADA COMPLIANCE CONSULTANT"**

H. Submittal Location, Closing Date and Time

To be considered, proposals, must be received by the Purchasing Agent of the City of Victorville, at 14343 Civic Drive, Victorville, CA 92392 on **NOVEMBER 30, 2015 at 2:00 p.m.**, in the Finance Division of the Administrative Services Department in City Hall. The proposal shall be submitted in a sealed envelope with all original pages intact. Proposal envelopes must be plainly marked and submitted as follows: **"Sealed Proposal for: "ADA COMPLIANCE CONSULTANT"**

E-mailed and faxed bids will not be accepted.

I. Written Questions and Answers

Any proposal received prior to the date and time specified for the receipt of proposals maybe withdrawn or modified by written request questions. All written questions shall be directed via mail, fax, or email to:

- Address: City of Victorville  
Admin Svcs Dept./Finance Division  
14343 Civic Drive  
Victorville, CA 92392-2399
- FAX: (760) 269-0045
- Email: [cmcalderon@victorvilleca.gov](mailto:cmcalderon@victorvilleca.gov)
- Attention: Celeste Calderon, Management Specialist
- Phone#: (760) 955-5082

In order for all competing Firm to receive the same information, no response shall be given to verbal questions submitted by telephone or in person. Personal and/or telephonic contact with the City staff in regard to this RFP is prohibited. The City may reject the proposal of such Firm.

Answers to all relevant questions will be addressed in addenda if deemed necessary.

J. Proposal Submittal

All proposals delivered in an express courier package shall be sealed in a separate envelope within the courier package. **Any proposal found to be illegible or incomplete shall be considered for rejection.** Whether sent by courier, mail, or by means of personal delivery, Proposers assume full responsibility for having their proposal deposited at the proper address and not later than the scheduled closing time. **Faxed or e-mailed** proposals or modifications will not be considered. More than one (1) proposal from an individual, Firm, Partnership, or Corporation under the same or different names, will not be considered.

The following material must be included for a proposing firm to be considered:

Executed copies of all Forms in Section D shall be attached to this request for proposal.

K. Proposal Acceptance

The City of Victorville reserves the right to accept or reject any and all proposals and waive any irregularities or informalities in any proposals or in the proposal process. The City of Victorville further reserves the right to award the contract to other than the lowest Proposer if such action is deemed to be in the best interest of the City of Victorville.

L. Understanding of the Project

The proposal shall contain a detailed explanation of the scope of work. Do not reiterate the contents of the RFP. The information offered should be a compendium of the Firm's knowledge of the project.

M. Evaluation and Ranking of Bids, Awards, and Execution of Contract

The City of Victorville reserves the right to accept or reject any and all proposals, to waive any irregularities or informalities in any proposal, and to award a contract to the Firm who best meets its requirements. Relevant factors which shall be completeness and accuracy of proposal; past experiences of the City of Victorville with the Firm (if applicable); references from other owners, developers, or municipalities regarding past work done by the Firm; combination of the certifications of the Checker(s) for that specialty; customer service record and experience of the proposed staff; ability to complete the job in the specified time.

Proposals may not be withdrawn for a period of ninety (90) days after date set for opening thereof, unless otherwise required by law.

The award of the contract, if awarded, will be made within forty-five (45) days after opening of the Proposals. The Service Provider's signature on the Bid Proposal form shall constitute a commitment on the part of the proposer to perform the work in a workmanship manner as set forth in the Proposal Form, the Terms and Conditions, Technical Provisions, and the Request for Proposal. The Firm to whom the contract is awarded shall be notified upon approval of the contract by the Purchasing Section of the Administrative Services Department. The Proposal Form, the Terms and Conditions, Scope of Services, the Request for Proposal, together with any plans and/or attachments, shall all be considered as part of the contract between the City and to the Firm to whom a Purchase Order is issued.

N. Public Record

Be advised that **all** information contained in proposals submitted in response to this solicitation **shall** become a matter of public record upon contract award, and be made available upon request, unless otherwise marked. The Firm must identify, in writing, all copyrighted material, trade secrets or other proprietary information the Firm claims are exempt from disclosure pursuant to the California Public Records Act. The Firm who claims such an exemption must also state in the proposal that, "The Firm agrees to indemnify and hold harmless the City and its officers, employees and agents from any claims, liability or damages against the city and to defend any actions brought against the city for its refusal to disclose such material, trade secrets or other proprietary information to any party."

O. Acceptance and Payment

Firm's invoice(s) shall include reference to the Purchase Order number issued for the services, and be accompanied by detailed supporting documentation, to include information on services rendered. The City shall pay the Firm's properly executed invoice, subject to approval by the Community Services Director or his designee, within thirty (30) days following receipt of the invoice. Total payment for each phase of the work will not exceed 90% of the estimated cost of that phase until all work under that phase is completed to the City's satisfaction. Total payment for all work shall not exceed the sum of the estimated cost of all completed phases plus the partial payments for partially completed phases. Payment will be withheld for any services which do not meet or exceed city requirements or have proven unacceptable until such services are replaced, resubmitted and accepted by the City.

P. Federal, State and Local Laws

The Firm and all subcontractors shall comply with all applicable federal, state, local laws, rules, and regulations.

Q. Retention of and Access to Records

At all reasonable times during the term of this contract and for a minimum of three (3) years following final settlement, the City of Victorville, and any designated representative shall have access to all records related to work performed under this contract and the Firm and all subs shall make such records available for inspection, audit, copying excerpts and transcriptions.

R. Drug-Free Workplace Requirements

The Firm and all sub(s) shall comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Sections 8350 et seq.).

S. Americans with Disabilities

The Firm and all subcontractors shall comply with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101 et seq.) which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

T. Conflict of Interest

No member, officer, or employee of the City of Victorville or of a local public body during his tenure or for one (1) year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.

Furthermore, the parties hereto covenant and agree that to their knowledge no board member, officer or employee of the City of Victorville has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of the contracting party other than the City of Victorville, and that if any such interest comes to the knowledge of either party at any time, a full and complete disclosure of such information will be made in writing to the other party or parties, even if such interest would not be considered a conflict of interest under Article 4 (commencing with Section 1090) or Article 4.6 (commencing with Section 1120) of Division 4 of Title I of the Government Code of the State of California.

U. Disputes

Any controversy or claim arising out of or relating to the provisions of this Agreement or the breach thereof shall be settled by arbitration, in accordance with the Rules of the American Arbitration Association, unless the parties agree, in writing, to some other form of alternative dispute resolution.

V. Non-Collusion Affidavit

All bids must be accompanied by a signed and notarized Non-Collusion Affidavit per the Public Contract Code Section 7106.

W. License

The awarded Firm shall obtain a **City of Victorville business license** and provide copy to the Project Manager or his designee prior to commencing work for the City.

X. Termination for Convenience

The City of Victorville may, by written notice, terminate this contract in whole or in part, when deemed in the city's interest. Upon termination of this contract, the City of Victorville shall only be liable for payment under the payment provisions of this contract for services rendered or supplies furnished prior to the effective date of termination.

Y. Termination for Default

The City of Victorville, may, by written notice of default to the Firm, terminate this contract in whole or in part if the Service Provider fails to:

1. Deliver or to perform the services within the time specified in this contract or any extension; or
2. Make progress, so as to endanger performance of this contract; or
3. Perform any of the other provisions of this contract.

Z. Ownership of Materials and Documents/Confidentiality

The City of Victorville retains ownership of any and all partial or complete reports, drawings, plans, notes, computations, lists, and/or other materials, documents, information, or data prepared by the Firm and/or the Firm's sub(s) pertaining to this document. Said materials and documents are confidential and shall be available to the City from the moment of their preparation, and the Firm shall deliver same to the City whenever requested to do so by the Project Manager and/or the City. The Firm shall provide the City with an electronic version of all project-related documents, including all text documents and drawings. The Firm agrees that same shall not be made available to any individual or organization, private or public, without the prior written consent of the City.

AA. Amendments and Request

The City of Victorville reserves the right to amend the Request for Proposals by addendum before the final proposal submittal date.

BB. GENERAL COMPLIANCE WITH LAWS AND WAGE RATES

The Firm shall be required to comply with all federal, state and local laws and ordinances applicable to work. This includes compliance with prevailing wage rates and their payments in accordance with California Labor Code, Section 1775.

CC. AFFIRMATIVE ACTION: The City of Victorville hereby notifies all bidders that it will affirmatively ensure that minority business enterprises will be afforded full opportunity and consideration when submitting bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, creed, or national origin when reviewing the bid proposals for award of contract.

DD. HIRING OF ILLEGAL ALIENS PROHIBITED: Firm shall not hire or employ any person to perform work within the City of Victorville or allow any person to

perform work required under this Agreement unless such person is properly documented and legally entitled to be employed within the United States.

- EE. SAFETY: The Firm and sub(s) shall comply with OSHA regulations applicable to this project regarding necessary safety equipment or procedures.



## CITY OF VICTORVILLE

### SECTION D – PROPOSAL DOCUMENTS

#### CC16-047 ADA COMPLIANCE CONSULTANT

##### SUBMISSION CERTIFICATION

I hereby submit to the City of Victorville the following cost proposal for work outlined in plans and specifications entitled **RFP FOR ADA COMPLIANCE CONSULTANT**. All of the following documents (check below) are completed, fully executed, and included in my proposal as required in the RFP documents:

_____	Submission Certification
_____	Cost Proposal
_____	Signature Authorization
_____	Customer References
_____	Public Contract Code Section 10162 Questionnaire
_____	Non-Collision Affidavit
_____	Addenda Acknowledgement
_____	Exception Form

My signature on this submittal Certification is affirmation that all items listed above are fully completed and executed and are hereby submitted with proposal as required. I understand that failure to complete and/or submit any of the required documents may be cause for rejection of my bid proposal.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Telephone Number

## CITY OF VICTORVILLE

### COST PROPOSAL

#### CC16-047 ADA COMPLIANCE CONSULTANT

TO THE CITY COUNCIL OF THE CITY OF VICTORVILLE, CALIFORNIA:

The undersigned declares he has carefully examined the locations of the proposed work, the Plans, Special Provisions, and Contract Documents; and being familiar with all of the conditions surrounding the work, including the availability of materials and labor, here by proposes to furnish all labor, materials, tools, equipment, and incidentals, to complete all the work. All of the aforementioned shall be done in accordance with said Plans, Special Provisions, and the most current editions, including all amendments at bid opening and in accordance with the City of Victorville Standard Specifications for Public Improvements.

*\* All rates submitted must be all-inclusive and final. The City will not pay **any** separate costs for travel, lodging, per diem, printing, shipping, etc.*

PROJECT: \_\_\_\_\_

Date: \_\_\_\_\_

Service Provider Name: \_\_\_\_\_

The total cost proposal includes all expenses for Phases 1 and 2. There are no additional reimbursable charges. All items and surveys include the licensure of the DMS at no cost for a period of four years. The Transition Plan is included in the costs presented below and will be finalized once the City determines, in conjunction with the Consultant, the projected dates for removal of barriers identified in the surveys.

#### **PHASES 1 and 2**

Self-Evaluation assistance, public input and policy review \$ \_\_\_\_\_  
Survey of City facilities and parks \$ \_\_\_\_\_  
Transition Plan development and final report: Included

#### **Task 1:**

Survey of 165 miles of City sidewalks @ \$\_\_\_\_ per mile \$ \_\_\_\_\_  
Survey of 4300 curb ramps @ \$\_\_\_\_ per curb ramp \$ \_\_\_\_\_  
Survey of 87 signalized intersections at \$\_\_\_\_ per intersection \$ \_\_\_\_\_

#### **Survey of Selected Sites at the Southern California Logistics Airport (SCLA)**

As above, additional site surveys at the Southern California Logistics Airport (SCLA) shall also be included in Tasks 1 and 2. These include four SCLA Facilities; Office Building #717, Converted Hanger #732, Fire Station #724 and the Airport Administration Building #728. Surveys and assessments provided by Consultant will be to the same standards of care as above. The total price for the above four sites is \$\_\_\_\_\_.

In addition, the City requires Consultant to provide an hourly rate for consulting time. Any additional services provided by Consultant will require an additional scope of services and an estimate. Estimates will be either on an hourly rate and expenses basis or a total fixed price, whichever is less. The hourly rate for a senior staff member is \$\_\_\_\_. Also, as stated above, the Consultant will provide software for a period of four years. Following the four year period, the cost for a yearly renewal of the Software license is \$\_\_\_\_\_/year.

The City is not under commitment for Task 2 or Task 3 by authorizing an agreement for Task 1. If authorized, Tasks 2 and 3 will be integrated into the Transition Plan and is included into the pricing below.

Contract addendums for Tasks 2 and 3 are anticipated to include surveys for additional public rights-of-way, which may break out as follows depending on City budgeting:

**Task 2 (if approved):**

Survey of 165 miles of City sidewalks @ \$\_\_\_ per mile \$\_\_\_\_\_

Survey of 4300 curb ramps @ \$\_\_\_ per curb ramp \$\_\_\_\_\_

**Task 3 (if approved):**

Survey of remaining 170 miles of City sidewalks @ \$\_\_\_ per mile \$\_\_\_\_\_

Survey of remaining 4400 curb ramps @ \$\_\_\_ per curb ramp \$\_\_\_\_\_

**Estimated Schedule**

It is estimated that the project will be completed in twelve months, or sooner. The estimated project timelines may be extended and done in additional phases which may result in additional savings.

**Consultant Responsibilities**

Consultant will arrange all project management activities for an efficient process to develop the ADA Transition Plan and provide the City with an anticipated project schedule prior to commencement of work.

Consultant will perform all work in conformance with current City policies and procedures and carry out the instructions received from the City, in cooperation with other City approved and involved agencies.

***NOTE: COST PROPOSAL NEEDS TO BE SUBMITTED SEPARATELY IN A SEALED ENVELOPE CLEARLY IDENTIFIED AS "SEALED COST PROPOSAL FOR RFP FOR ADA COMPLIANCE CONSULTANT"***

**CITY OF VICTORVILLE**  
**SIGNATURE AUTHORIZATION**  
**CC16-047 ADA COMPLIANCE CONSULTANT**

PROPOSER: \_\_\_\_\_

- A. I hereby certify that I have the authority to offer this proposal to the City of Victorville for the above listed individual or company. I certify that I have the authority to bind myself/this company in a contract should I be successful in my proposal.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

- B. The following information relates to the legal contractor listed above, whether an individual or a company. Place check marks as appropriate:

1. If successful, the contract language should refer to me as:

\_\_\_\_\_ An individual.

\_\_\_\_\_ A partnership, Partners' names:

\_\_\_\_\_ A company.

\_\_\_\_\_ A corporation.

2. My tax identification number is: \_\_\_\_\_  
(For individuals this number is usually the Social Security Number.)

3. \_\_\_\_\_ I am a certified small business and Small Business Preference is applicable to this proposal. A copy of my certification from the Office of Small and Minority Business is attached.

\_\_\_\_\_ I have recently filed for Small Business Preference but have not yet received certification.

\_\_\_\_\_ I am not a Small Business.

4. \_\_\_\_\_ My business is owned by a minority whose ethnicity is:

\_\_\_\_\_ My business is owned by a woman.

\_\_\_\_\_ My business is owned by a disabled veteran.

C. Proposer's Information

Person: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

## CITY OF VICTORVILLE

### REFERENCES CC16-047 ADA COMPLIANCE CONSULTANT

City of Victorville requests a minimum of three (3) references where work of a similar size and scope has been completed for public agencies.

1. Public Agency Name: \_\_\_\_\_

Brief Description of Project: \_\_\_\_\_

\_\_\_\_\_

Completion Date: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email Address: \_\_\_\_\_

2. Public Agency Name: \_\_\_\_\_

Brief Description of Project: \_\_\_\_\_

\_\_\_\_\_

Completion Date: \_\_\_\_\_

Contact Person:\_\_\_\_\_

Telephone:\_\_\_\_\_ Fax:\_\_\_\_\_

Email Address:\_\_\_\_\_

3. Public Agency Name:\_\_\_\_\_

Brief Description of Project: \_\_\_\_\_

\_\_\_\_\_

Completion Date:\_\_\_\_\_

Contact Person:\_\_\_\_\_

Telephone:\_\_\_\_\_ Fax:\_\_\_\_\_

Email Address:\_\_\_\_\_





**CITY OF VICTORVILLE**

**NON-COLLUSION AFFIDAVIT**

TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID

(Per Public Contract Code Section 7106)

STATE OF CALIFORNIA }

COUNTY OF }

\_\_\_\_\_, being first duly sworn, deposes, and say he,  
they

(sole owner, partner, president, secretary, etc.)

of \_\_\_\_\_,  
the party making the foregoing bid; that such bid is not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization, or corporation; that such bid is genuine and not collusive or sham; that said bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, nor that anyone shall refrain from bidding; that said bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of said bidder or of any other bidder; nor to fix any overhead profit, or cost element of such bid price, nor that of any other bidder; nor to secure any proposed contract; that all statements contained in such bid are true. And further, that said bidder has not directly or indirectly submitted his bid price or any breakdown thereof, nor paid and will not pay fees in connection therewith to any corporation partnership, company, association, organization, bid depository, not to any member or agent thereof, nor to any other individual except to such person or persons as have a partnership or other financial interest with said bidder in his general business.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

State of California

County of \_\_\_\_\_

Subscribed and sworn to (or affirmed) before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_ proved to me on the basis of satisfactory evidence to be  
the person(s) who appeared before me.

(Seal)

Signature\_\_\_\_\_

**CITY OF VICTORVILLE**

**ADDENDA ACKNOWLEDGMENT  
CC16-047 ADA COMPLIANCE CONSULTANT**

The undersigned acknowledges receipt of the following ADDENDA and the cost, if any, or such revision has been included in the TOTAL BID of the Bidding Schedule(s). If NONE, WRITE "NONE" ON THE FIRST LINE.

ADDENDA NO. \_\_\_\_\_

DATED:\_\_\_\_\_

ADDENDA NO. \_\_\_\_\_

DATED:\_\_\_\_\_

ADDENDA NO. \_\_\_\_\_

DATED:\_\_\_\_\_

ADDENDA NO. \_\_\_\_\_

DATED:\_\_\_\_\_

\_\_\_\_\_  
NAME OF BIDDER

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
TELEPHONE NO.

By:\_\_\_\_\_

Signature:\_\_\_\_\_

**CITY OF VICTORVILLE**

**EXCEPTION FORM  
CC16-047 ADA COMPLIANCE CONSULTANT**

Should Proposer take exception to **ANY** of the terms and conditions or other contents provided in the RFB for On-Call Plan Checker Services, list the exceptions below. **THIS COMPLETED FORM MUST BE RETURNED WITH YOUR PROPOSAL.** If no exception(s) are taken, enter "***NONE***" for the first item. *(Make additional copies of this form as necessary)*

Page Number: \_\_\_\_\_ Section Title: \_\_\_\_\_

Paragraph Number: \_\_\_\_\_ Exception Taken: \_\_\_\_\_

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Page Number: \_\_\_\_\_ Section Title: \_\_\_\_\_

Paragraph Number: \_\_\_\_\_ Exception Taken: \_\_\_\_\_

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Page Number: \_\_\_\_\_ Section Title: \_\_\_\_\_

Paragraph Number: \_\_\_\_\_ Exception Taken: \_\_\_\_\_

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**ATTACHMENT**  
**SAMPLE**  
**CONSULTANT PROFESSIONAL**  
**AGREEMENT**

# CONSULTANT/PROFESSIONAL SERVICES PROVIDER AGREEMENT

BY AND BETWEEN  
THE CITY OF VICTORVILLE  
AND  
(NAME OF CONSULTANT)  
FOR  
(TITLE, PROJECT NUMBER)

THIS CONSULTANT/PROFESSIONAL SERVICES PROVIDER AGREEMENT (hereinafter "Agreement"), is made and entered into by and between THE CITY OF VICTORVILLE, a Public Body, Corporate and Politic located in the County of San Bernardino, State of California, hereinafter referred to as the "City", and (CONSULTANT), hereinafter referred to as "Consultant." City and Consultant are sometimes hereinafter referred to individually as a "Party" and collectively referred to as the "Parties."

## RECITALS:

WHEREAS, the City requires (DESCRIBE CONSULTANT PROFESSIONAL SERVICES) for (DESCRIBE SERVICES), and;

WHEREAS, Consultant represents that it is fully qualified to perform the consulting and/or professional services required for performance under this Agreement by virtue of its experience and the training, education and expertise of its principals and its employees; and

WHEREAS, in light of the facts set forth above, the City desires to retain the services of a qualified Consultant to provide, on an independent contractor basis, (DESCRIBE SERVICES).

NOW THEREFORE, IN CONSIDERATION OF THE COVENANTS, CONDITIONS, AND PROMISES CONTAINED HEREIN AND FOR SUCH OTHER GOOD AND VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

### Section 1. RECITALS

The Recitals set forth above are true and correct and are hereby incorporated into this Agreement by this reference, as though set forth fully herein.

### Section 2. SCOPE OF SERVICES

Consultant shall provide to the City those services set forth in the Scope of Services, attached hereto as Exhibit "A", and incorporated as part of this Agreement by this reference.

### Section 3. COMPENSATION

The City shall pay to Consultant a sum not to exceed SPELL OUT DOLLAR AMOUNT AND 00/100 DOLLARS (\$0.00) for faithful performance of the services to be rendered under

this Agreement, subject to the Fee Schedule provisions of Section 4, below. No expense reimbursements, including, but not limited to, reimbursements for travel, parking, lodging, and/or meals shall be paid to Consultant unless such expense reimbursements: (i) are specifically provided for and described by nature and type in Exhibit "B", below; (ii) appear on Consultant's monthly invoices to City; (iii) are supported by the appropriate receipts and other such documentation as the City shall require; and (iv) are directly related to the Scope of Services to be performed under this Agreement. In addition, any and all reimbursements shall be made in accordance with any City policy governing same.

#### **Section 4. FEE SCHEDULE**

The City shall pay Consultant as provided in the Fee Schedule, attached hereto as Exhibit "B", and incorporated as part of this Agreement by this reference. The provisions of Exhibit "B" notwithstanding, in order to receive payments, Consultant shall be required to submit to the City detailed monthly invoices which include, if applicable, a description of all services/tasks performed, the number of hours expended on each service/task, the name of the person performing the service/task, and expense reimbursement information, if any, as required by Section 3, above. Provided that services have been satisfactorily rendered, invoices shall be paid by the City approximately thirty (30) working days following receipt of Consultant's invoice.

#### **Section 5. RESERVED**

#### **Section 6. TERM OF AGREEMENT**

This Agreement shall be for an Initial Term of **(NUMBER of MONTHS)**, commencing on **(COMMENCEMENT DATE)** (the "Commencement Date") and expiring on **(TERMINATION DATE)** (the "Termination Date") (the "Term"), unless terminated earlier pursuant to Section 21 of this Agreement. From and after the Termination Date, and upon subsequent agreement by the Parties, this Agreement may continue on a month-to-month basis until terminated pursuant to Section 21 below.

**\*\*\*IF NO OPTION PERIODS -- DELETE THE FOLLOWING PARAGRAPH FROM THE AGREEMENT IN ITS ENTIRETY\*\*\***

This Agreement may be extended for **(NUMBER OF YEARS, MONTHS, ETC.)** (hereinafter "Option Period"), at the option of City, subject to satisfactory performance as determined by the City. City shall give Consultant sixty (60) days advance written notice prior to the expiration the initial Term and sixty (60) days advance written notice prior to the expiration date of each subsequently exercised Option Period, if any, should the City decide to exercise its option(s) to extend. In the event City does not give Consultant such written notice of its option to extend, this Agreement shall terminate at the end of the then-current Term or Option Period without further notice from either Party, unless terminated earlier pursuant to the provisions of Section 21 below. Should the City fail to give Consultant the sixty (60) days written notice of its intention to exercise any Option Period, the City may, in its sole discretion, elect to exercise any Option Period at a later date, following written inquiry from Consultant.

**Section 7.**

**INDEPENDENT CONTRACTOR STATUS**

It is the express intention of the parties that Consultant is an independent contractor and not an employee, agent, joint venturer, or partner of the City. Nothing in this agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between the City and Consultant or any employee or agent of Consultant. Both parties acknowledge that Consultant is not an employee for state or federal tax purposes or any other purpose. Consultant shall retain the right to perform services for others during the term of this agreement.

**Section 8.**

**REPRESENTATIONS AND ACKNOWLEDGMENTS  
REGARDING INDEPENDENT CONTRACTOR'S STATUS OF  
CONSULTANT**

a. Consultant represents and acknowledges the following:

(1) The City is not required to provide any training or legal counsel to Consultant or its employees in order for Consultant to perform the services described in this Agreement.

(2) Performance of the services described in this Agreement does not have to be integrated into the daily business operations of the City.

(3) The services described in this Agreement can be performed without the use of City equipment, materials, tools, or facilities, unless otherwise provided under a separate agreement.

(4) Nothing in this Agreement shall be interpreted to imply that the City must maintain any contractual relationship with Consultant on a continuing basis after termination of this Agreement.

(5) The City will not be requested or demanded to assume any liability for the direct payment of any salary, wage, or other such compensation to any person employed by Consultant to perform the services described in this Agreement.

(6) Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are employees of the City.

b. The City represents and acknowledges the following:

(1) Consultant is solely responsible for determining who, under the supervision or direction of Consultant, will perform the services set forth in this Agreement.

(2) The City will not hire, supervise, or pay any employees or assistants working for Consultant pursuant to this Agreement. Nothing contained in this Agreement shall prevent the City from hiring Consultant's employees or assistants after termination of this Agreement.

(3) Nothing in this Agreement shall be interpreted to imply that Consultant must maintain any contractual relationship with the City on a continuing basis after termination of this Agreement.

(4) It is the sole responsibility of Consultant to set the hours in which Consultant performs or plans to perform the services set forth in this Agreement.

(5) Consultant is not required to devote full time to the business operations of the City in order to perform the services set forth in this Agreement.

(6) Unless deemed necessary under certain circumstances, Consultant is not required to perform the services set forth in this Agreement at City Hall or on City-owned property.

(7) Other than attendance at required public meetings and public hearings, and complying with the provisions of the Payment Schedule set forth in Exhibit B and any procedural requirements set forth by law, Consultant is not required to perform the services set forth in this Agreement in any particular order or sequence.

(8) Nothing in this Agreement shall be interpreted to preclude Consultant from working for other persons or firms, provided that such work does not create a conflict of interest.

#### **Section 9. NOT AGENT OF THE CITY**

a. Nothing contained in this Agreement shall be deemed, construed, or represented by the City or Consultant or by any third person to create the relationship of principal and agent.

b. Consultant shall have no authority, express or implied, to act on behalf of the City in any capacity whatsoever as an agent, nor shall Consultant have any authority, express or implied, to bind the City to any obligation whatsoever.

#### **Section 10. LICENSES AND PERMITS**

Consultant represents that it has obtained and will maintain at all times during the Initial Term (and during the Option Period, if applicable) of this Agreement all business licenses, including but not limited to a City of Victorville business license, professional licenses or certifications, or permits necessary for performing the services described in this Agreement.

#### **Section 11. STANDARD OF PERFORMANCE; WARRANTY**

a. Consultant agrees to perform all services required by this Agreement in a professional and competent manner, in accordance with the degree of skill and diligence which is normally employed by reputable professionals performing similar services under similar conditions in the same or similar locality. Such services shall also be performed in a manner which is reasonably satisfactory to **(INSERT DEPT. HEAD NAME AND TITLE)**, or his designee.

b. By executing this Agreement, Consultant warrants that it:

(1) Has thoroughly investigated and considered the services and work to be performed;



(2). Has investigated the issues regarding the scope of services to be provided;

(3) Has carefully considered how the services and related work should be performed; and

(4) Fully understands the facilities, difficulties and restrictions associated with performance of the services required by this Agreement.

## **Section 12. FAMILIARITY WITH WORK**

Should Consultant discover any latent or unknown conditions materially differing from those inherent in the services or as represented by the City, Consultant shall immediately inform the City of such fact and shall not provide any services, except at Consultant's risk, until written instructions are received from **(INSERT DEPT. HEAD NAME AND TITLE)**, or his designee.

## **Section 13. CONFLICTS OF INTEREST**

Consultant covenants that it does not have any interest, nor shall it acquire any interest, directly or indirectly, which would conflict in any manner with the performance of Consultant's services under this Agreement. Consultant further covenants that in the performance of services under this Agreement, no officer, employee or agent of Consultant having such interest shall be employed by it. In the event the City determines that Consultant must disclose its financial interests by completing and filing a Fair Political Practices Commission Form 700, Statement of Economic Interests, Consultant shall file such Form 700 with the City Clerk's Office pursuant to the written instructions provided by the City Clerk. Acquisition or maintenance of a conflicting interest by Consultant may result in termination of this Agreement by the City.

## **Section 14. COMPLIANCE WITH LAWS**

Consultant shall comply with all local, state, and federal laws and regulations applicable to the services to be rendered hereunder, including any rule, regulation, or bylaw governing the conduct or performance of Consultant or its employees, officers, or board members.

## **Section 15. COMMERCIAL GENERAL AND AUTOMOBILE LIABILITY INSURANCE**

a. Consultant shall procure and maintain at its own expense, during the Initial Term of this Agreement (and during the Option Period, if applicable), Commercial General Liability Insurance, of not less than One Million Dollars (\$1,000,000) per occurrence, and Two Million Dollars (\$2,000,000) in the aggregate, for bodily injury, personal injury, death, loss, or damage resulting from the wrongful or negligent acts by Consultant or its officers, employees, servants, volunteers, and agents and independent contractors.

b. Consultant shall further procure and maintain, at its own expense, during the Initial Term of this Agreement, (and during the Option Period, if applicable), Commercial Vehicle Liability Insurance covering personal injury and property damage, of not less than One Million Dollars (\$1,000,000) combined single limit, covering any vehicle utilized by Consultant or its

officers, employees, servants, volunteers, agents and independent contractors in performing the services required by this Agreement.

**Section 16.**                    **WORKERS' COMPENSATION INSURANCE**

a.        Consultant shall procure and maintain at its own expense, during the Initial Term of this Agreement (and during the Option Period, if applicable), Workers' Compensation Insurance, providing coverage as required by the California State Workers' Compensation Law.

b.        If any class of employees employed by the Consultant pursuant to this Agreement is not protected by the California State Workers' Compensation Law, Consultant shall provide adequate insurance for the protection of such employees to the satisfaction of the City.

**Section 17.**                    **PROFESSIONAL LIABILITY INSURANCE**

Professional Liability Insurance or Errors and Omissions insurance as appropriate to Consultant's profession shall be required and written on a policy form specifically designed to provide coverage for and protect against the negligent acts, errors and omissions of the Consultant in the performance of the services required by this Agreement. A minimum limit of \$1,000,000 per claim and in the aggregate must be provided.

**Section 18.**                    **ADDITIONAL INSURED**

Notwithstanding any inconsistent statement in any required insurance policies or any subsequent endorsements attached thereto, all insurance policies, except for the Workers' Compensation and Professional Liability, shall be endorsed to name the City and its officers, employees, servants, volunteers, agents and independent contractors, including, without limitation, the City Attorney, as Additional Insureds.

**Section 19.**                    **WAIVER OF SUBROGATION RIGHTS**

Consultant shall require the carriers of all required insurance policies, with exception to Professional Liability, to waive all rights of subrogation against the City and its officers, employees, servants, volunteers, agents, and independent contractors and subcontractors. Each policy of insurance shall be endorsed to reflect such waiver.

**Section 20.**                    **PROOF OF INSURANCE COVERAGE; REQUIRED ENDORSEMENTS**

a.        Consultant shall secure from a good and responsible company or companies authorized to transact insurance business in the State of California, the policies of insurance required by this Agreement and furnish to the City Clerk certificates of insurance evidencing the required coverage, and policy endorsements at least one (1) business day prior to the commencement of any services to be performed under this Agreement.

b.        The policies and certificates of insurance shall be endorsed to provide that in the event of cancellation or amendment of any required insurance policy for any reason whatsoever, the City shall be notified by mail, postage prepaid, not less than thirty (30) days

before the cancellation or amendment is effective. In the case of cancellation for non-payment, ten (10) days advance written notice shall be given.

c. Each policy and certificate of insurance shall be endorsed to provide that the policy shall not be terminated or expire without first providing thirty (30) days written notice to the City of such termination or expiration.

d. Each policy and certificate of insurance shall be endorsed to provide that the policy will be maintained throughout the Initial Term (and during the Option Period, if applicable), of this Agreement.

e. The Commercial General Liability and Vehicle Liability policies shall be endorsed to contain the following provision: "For any claims related to this Agreement, Consultant's coverage shall be primary with respect to the City. Any insurance maintained by the City shall be in excess of Consultant's insurance and shall not contribute with it."

## **Section 21.                      TERMINATION OR SUSPENSION**

a. This Agreement may be terminated or suspended without cause by either Party at any time, provided that the Party initiating the termination provides the other Party at least thirty (30) days advance written notice of such termination or suspension. In the event of such termination, the City shall only be liable for payment under the payment provisions of this Agreement for satisfactory services rendered or supplies actually furnished prior to the effective date of termination.

b. This Agreement may be terminated or suspended with cause by either Party at any time, provided that the Party initiating termination provides the other Party at least ten (10) days advance written notice of such termination or suspension. In the event of such termination, the City shall only be liable for payment under the payment provisions of this Agreement for satisfactory services rendered or supplies actually furnished prior to the effective date of termination.

## **Section 22.                      TIME OF THE ESSENCE**

Time is of the essence in the performance of this Agreement.

## **Section 23.                      INDEMNIFICATION**

a. Consultant shall defend, indemnify, and hold harmless the City, its officers, employees, representatives, and agents, from and against those actions, suits, proceedings, claims, demands, losses, costs, and expenses, including legal costs and attorneys fees, for any personal injuries, deaths, or property damage (including property owned by the City), which may arise out of Consultant's negligence or willful misconduct in the performance of the services described in this Agreement, unless such losses or damages are proven to be caused by the City's own negligence or willful misconduct, or that of its officers or employees.

b. The City does not and shall not waive any rights that it may have against Consultant under this Section, because of the acceptance by the City, or the deposit with the City, of any insurance policy or certificate required pursuant to this Agreement. The hold harmless and indemnification provisions of this Section shall apply regardless of whether said

insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost, or expense described herein.

#### **Section 24.                      REPORTS**

Upon request by **(INSERT DEPT. HEAD NAME AND TITLE)**, or his designee, or as otherwise required by this Agreement, including but not limited to, the Scope of Services set forth in Exhibit "A", Consultant shall prepare and submit reports to the City concerning Consultant's performance of the services required by this Agreement.

#### **Section 25.                      RECORDS**

a.        Consultant shall keep such books and records as shall be necessary to perform the services required by this Agreement and enable **(INSERT DEPT. HEAD NAME AND TITLE)** or his designee, to evaluate the cost and the performance of such services.

b.        Books and records pertaining to costs shall be kept and prepared in accordance with generally accepted accounting principles.

c.        **(INSERT DEPT. HEAD NAME AND TITLE)**, or his designee, shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

d.        Records and supporting documents pertaining to the use of funds paid to Consultant hereunder shall be retained by Consultant and made available to **(INSERT DEPT. HEAD NAME AND TITLE)**, or his designee, for purposes of performing an audit for a period of five (5) years from the date of termination of this Agreement.

#### **Section 26.                      RESERVED**

#### **Section 27.                      CONFIDENTIALITY; OWNERSHIP OF WORK**

a.        Any and all documents and information obtained from the City or prepared by Consultant for the City shall be kept strictly confidential unless otherwise provided by applicable law. All City data, documents and information shall be returned to the City upon termination of the Agreement.

b.        Any drawings, specifications, reports, records, documents, or other materials prepared by Consultant in the performance of services under this Agreement shall not be released publicly without the prior written approval of **(INSERT DEPT. HEAD NAME AND TITLE)**, or his designee, or as required by applicable law.

c.        Consultant shall not disclose to any other entity or person any information regarding the activities of the City, except with the prior written approval of **(INSERT DEPT. HEAD NAME AND TITLE)**, or his designee, or as required by applicable law.

d.        All original documents, reports, designs, computer files and all other materials prepared by Consultant in the course of performing the services pursuant to this Agreement, whether completed or in progress, are the property of the City and shall be surrendered to the City upon the completion of Consultant's services or when requested by **(INSERT DEPT. HEAD**

**NAME AND TITLE)**, or his designee. Such materials may be used, reused or otherwise disposed of by the City without the permission of Consultant.

e. Consultant's covenants under this Section 28 shall survive the termination of this Agreement.

#### **Section 28. PRINCIPAL REPRESENTATIVES**

a. **(CONSULTANT REPRESENTATIVE NAME AND TITLE)**, is designated as the principal representative of Consultant for purposes of communicating with the City on any matter associated with the performance of the services set forth in this Agreement.

b. **(INSERT DEPT. HEAD NAME AND TITLE)**, or his designee, shall be the principal representative of the City for purposes of communicating with Consultant on any matter associated with the performance of the services set forth in this Agreement.

c. Either Party may designate another individual as its principal representative by giving written notice of such designation to the other Party.

#### **Section 29. MODIFICATIONS AND AMENDMENTS; EXTRA SERVICES**

a. This Agreement may be modified or amended only by a written instrument signed by both Parties.

b. During the Initial Term, the City may request that the Consultant perform Extra Services. As used herein, "Extra Services" means any services, which are determined by the City to be necessary for the proper completion of **(PROJECT TITLE)** but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. A written instrument signed by both Parties shall be required to authorize performance of and payment for Extra Services.

#### **Section 30. ENTIRE AGREEMENT**

a. This Agreement supersedes any and all prior or contemporaneous agreements, either oral or written, between the City and Consultant with respect to the subject matter of this Agreement.

b. This Agreement contains all of the covenants and agreements between the Parties with respect to the subject matter of this Agreement, and each Party to this Agreement acknowledges that no representations, inducements, promises, or agreements have been made by or on behalf of any Party, except those covenants and agreements in this Agreement.

c. No agreement, statement, or promise with respect to the subject matter of this Agreement, which is not contained in this Agreement, or in a valid modification or amendment to this Agreement, shall be valid or binding on either Party.

#### **Section 31. AMBIGUITIES**

This Agreement is in all respects intended by each Party hereto to be deemed and construed to have been jointly prepared by the Parties and the Parties hereby expressly agree that any uncertainty or ambiguity existing herein shall not be interpreted against either of them.

Except as expressly limited by this paragraph, all of the applicable rules of interpretation of contract shall govern the interpretation of any uncertainty or ambiguity of this Agreement.

Notwithstanding the foregoing, the Parties agree that **Exhibit "A"** is attached hereto for reference purposes and to the extent there are any ambiguities, inconsistencies or conflicts between the terms of this Consultant/Professional Services Standard Provider Agreement and **Exhibit "A"**, the terms of this Consultant/Professional Services Standard Provider Agreement shall control and nothing set forth in **Exhibit "A"** shall be deemed to supersede any of the provisions of this Consultant/Professional Services Standard Provider Agreement.

## Section 32. NOTICES

a. Any notice to be provided pursuant to this Agreement shall be in writing, and all such notices shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the Parties as follows:

To the City: (DEPT. HEAD NAME AND TITLE)

(REQUESTING) Department

City of Victorville

14343 Civic Drive

Victorville, CA 92392

To Consultant: (CONSULTANT REP. NAME AND TITLE)  
(COMPANY NAME)  
(ADDRESS)  
(CITY, STATE, ZIP)

b. Notices, payments, and other documents shall be deemed delivered upon receipt by personal service or as of the second (2nd) day after deposit in the United States mail.

**Section 33.           NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES**

No officer or employee of the City shall be personally liable to Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount, which may become due to Consultant or to its successor(s), or for any breach of any obligation of the terms of this Agreement.

**Section 34. REVIEW BY ATTORNEYS**

Each Party hereto has had its attorney(s) review this Agreement and all related documents. Each Party hereto has consulted with its attorney(s) and has negotiated the terms of this Agreement based on such consultation.

**Section 35.**                    **WAIVER**

a.        No waiver shall be binding unless executed in writing by the Party making the waiver.

b.        No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision.

c.        Failure of either Party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of such provision or any of the remaining provisions of this Agreement.

**Section 36.**                    **ASSIGNMENT**

This Agreement shall not be assigned by either Party without prior written consent of the other Party.

**Section 37.**                    **CARE OF WORK**

The performance of services by Consultant or the payment of money by the City shall not relieve Consultant from any obligation to correct any incomplete, inaccurate, or defective work at no further cost to the City, when such incomplete, inaccurate or defective work is due to the negligence of Consultant.

**Section 38.**                    **CAPTIONS AND HEADINGS**

The captions and headings contained in this Agreement are provided for identification purposes only and shall not be interpreted to limit or define the content of the provisions described under the respective caption or heading.

**Section 39.**                    **SUCCESSORS, HEIRS, AND ASSIGNS**

Except as otherwise expressly provided herein, this Agreement shall be binding upon the successors, endorsees, assigns, heirs, and personal representatives of each of the Parties to this Agreement and, likewise, shall inure to the benefit of the successors, endorsees, assigns, heirs, and personal representatives of each of the Parties.

**Section 40.**                    **GENDER**

In this Agreement, unless the context clearly requires otherwise, the masculine, feminine and neuter genders and the singular and the plural shall include one another.

**Section 41.**                    **SEVERABILITY**

If any one or more of the sentences, clauses, paragraphs, or sections contained herein is declared invalid, void, or unenforceable by a court of competent jurisdiction, the same shall be

deemed severable from the remainder of this Agreement and shall not affect, impair, or invalidate any of the remaining sentences, clauses, paragraphs, or sections contained herein.

**Section 42.**                    **GOVERNING LAW**

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the Parties under this Agreement, shall be construed pursuant to and in accordance with California law.

**Section 43.**                    **DEFAULT**

a.        Failure or delay by any Party to this Agreement to perform any material term or provision of this Agreement shall constitute a default under this Agreement; provided however, that if the Party who is otherwise claimed to be in default by the other Party commences to cure, correct, or remedy the alleged default within fifteen (15) days after receipt of written notice specifying such default and shall diligently complete such cure, correction, or remedy, such Party shall not be deemed to be in default hereunder.

b.        The Party claiming that a default has occurred shall give written notice of default to the Party in default, specifying the alleged default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default; provided, however, the injured Party shall have no right to exercise any remedy for a default hereunder without delivering the written default notice, as specified herein.

c.        Any failure or delay by a Party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default.

d.        In the event that a default by any Party to this Agreement may remain uncured for more than fifteen (15) days following written notice, as provided above, the injured Party shall be entitled to seek any appropriate remedy or damages by initiating legal proceedings.

**Section 44.**                    **CUMULATIVE REMEDIES**

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default of any other default by the other Party.

**Section 45.**                    **VENUE**

All proceedings involving disputes over the terms, provisions, covenants, or conditions contained in this Agreement and all proceedings involving any enforcement action related to this Agreement shall be initiated and conducted in the applicable court or forum in San Bernardino County, California.



**Section 46.**                    **ATTORNEYS' FEES**

In the event any action, suit, or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Agreement, or as a result of any alleged breach of any provision of this Agreement, the prevailing Party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorneys' fees, from the losing Party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

**Section 47.**                    **EFFECTIVENESS OF AGREEMENT**

This Agreement shall not be binding upon the City, until signed by the authorized representative(s) of Consultant, approved by the City's Risk Manager, and executed by the authorized City personnel or Mayor.

**Section 48.**                    **REPRESENTATIONS OF PARTIES AND PERSONS  
EXECUTING AGREEMENT**

(a) Each of the Parties to this Agreement hereby represents that all necessary and appropriate actions of their governing bodies have been taken to make this Agreement a binding obligation of each of the Parties hereto.

(b) The persons executing this Agreement warrant that they are duly authorized to execute this Agreement on behalf of and bind the Parties each purports to represent.

**Section 49.**                    **COUNTERPARTS**

This Agreement may be executed by the parties in counterparts, and when executed by each of the parties, each counterpart shall be deemed to be a part of this Agreement.

(END OF THIS PAGE)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the dates written below.

THE CITY OF VICTORVILLE

(CONSULTANT)

By: \_\_\_\_\_

By: \_\_\_\_\_

(NAME AND TITLE)

(INSERT NAME & TITLE OF  
PERSON SIGNING ON BEHALF  
OF CONSULTANT)

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_

**Carolee Bates, City Clerk**

THE CITY OF VICTORVILLE

Approved as to Standard Form:

By: \_\_\_\_\_

By: \_\_\_\_\_

**Chuck Buquet,  
Risk Manager**

**Andre de Bortnowsky,  
City Attorney**

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

## **EXHIBIT A**

### **SCOPE OF SERVICES**

***See Attachment***

## **EXHIBIT B**

### **FEE SCHEDULE**

***(or Bid Proposal Forms, Payment Schedule, etc.)***

***See Attachment***